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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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IN THE MATTER OF:)	Docket No.	CAA-5- 99-047
)		
CDT Landfill Corporation)	Proceeding to Assess an	
Joliet, Illinois,)	Administrative Penalty	
)	under Section 113(d) of the	
Respondent.)	Clean Air Act,	
)	42 U.S.C. § 7413(d)	
_____)		

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Acting Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is CDT Landfill Corporation (CDT), a corporation doing business in the State of Illinois.

STATUTORY AND REGULATORY BACKGROUND

4. The New Source Performance Standards (NSPS) for Municipal Solid Waste Landfills, apply to Municipal Solid Waste (MSW) landfills that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991.

5. The NSPS at 40 C.F.R. Part 60, Subpart WWW, became effective on May 12, 1996.

6. The NSPS at 40 C.F.R. § 60.752(b) and 40 C.F.R. § 60.757(b) require that the owner or operator of a subject MSW landfill submit an NMOC emission rate report to the Administrator initially and annually.

7. The NSPS at 40 C.F.R. § 60.752(b)(2) require that an owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and having a calculated NMOC emission rate equal to or greater than 50 megagrams per year submit a collection and control system design plan prepared by a professional engineer to the Administrator within one year of calculating the NMOC rate.

8. The NSPS at 40 C.F.R. § 60.752(b) require that an owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters is subject to the Clean Air Act Permit Program (CAAPP) requirements at 40 C.F.R. Part 70.

9. The CAAPP regulations at 40 C.F.R. § 70.5(a)(1) state that a timely application for a source applying for a permit is one that is submitted within twelve months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.

10. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up

to a total of \$220,000 for violations that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

11. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than twelve months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

GENERAL ALLEGATIONS

13. The Attorney General of the United States and the Administrator of U.S. EPA, each through their respective delegates, have jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this Complaint.

14. Paragraphs 1-13 are incorporated herein by reference.

15. The Respondent in this proceeding is CDT Landfill Corporation (CDT).

16. Respondent is an Illinois corporation with a place of business located at 2851 Mound Road, Joliet, Illinois 60436.

17. Respondent is doing business in the State of Illinois.

18. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

19. The NSPS regulations at 40 C.F.R. Part 60, Subpart WWW, apply to CDT.

20. On May 5, 1999, United States Environmental Protection Agency (U.S. EPA) issued a Finding of Violation (FOV) to CDT for violations of the NSPS for Municipal Solid Waste Landfills.

21. On July 15, 1999, U.S. EPA and CDT held a conference to discuss the May 5, 1999 FOV.

Count I

22. Complainant incorporates paragraphs 1 through 21 of this Complaint, as if set forth in this paragraph.

23. CDT failed to submit an annual NMOC emission rate report to the Administrator, in violation of 40 C.F.R. § 60.752(b) and § 60.757(b).

24. CDT's violations of 40 C.F.R. § 60.752(b) and § 60.757(b) constitute violations of the NSPS and subjects CDT to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count II

25. Complainant incorporates paragraphs 1 through 24 of this Complaint, as if set forth in this paragraph.

26. CDT failed to submit a gas collection and emission control system design plan within a year after reporting the NMOC emission rate greater than 50 megagrams per year, in violation of 40 C.F.R. § 60.757(c).

27. CDT's violation of 40 C.F.R. § 60.757(c) constitutes a violation of the NSPS and subjects CDT to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count III

28. Complainant incorporates paragraphs 1 through 27 of this Complaint, as if set forth in this paragraph.

29. CDT failed to file an application to obtain a CAAPP permit, in violation of 40 C.F.R. § 60.752(b) and § 70.5(d).

30. CDT's violation of 40 C.F.R. § 60.757(b) and § 70.5(d) constitute violations of the NSPS and the CAAPP, and subjects CDT to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

COUNT IV

31. Complainant incorporates paragraphs 1 through 30 of this Complaint, as if set forth in this paragraph.

32. CDT failed to conduct the required performance testing, in violation of 40 C.F.R. § 60.8 and § 60.752(b)(2)(iii)(B).

33. CDT's violation of 40 C.F.R. § 60.8 and § 60.752(b)(2)(iii)(B) constitute violations of the NSPS and subjects CDT to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Proposed Civil Penalty

34. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d), 42 U.S.C. § 7413(e).

35. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$72,380. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

36. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

37. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22) govern this proceeding to assess a civil penalty. Enclosed with

the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

38. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

39. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Ms. Louise Gross, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Gross at (312) 886-6844. Ms. Gross's address is:

Office of Regional Counsel, C-14J
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

40. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America," and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Ms. Gross and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

41. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 42 through 47, below.

Answer

42. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer,

Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 38, above, and must serve copies of the written answer on the other parties.

43. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

44. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

45. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

46. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and

- d. whether Respondent requests a hearing as discussed in paragraph 41, above.

47. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

48. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Ms. Gross at the address or phone number specified in paragraph 39, above.

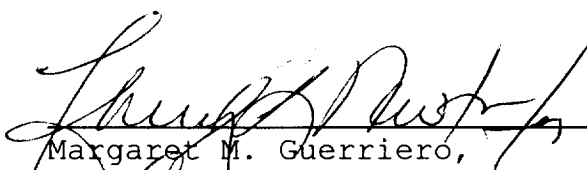
49. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

50. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

Date

9/29/99


Margaret M. Guerriero,
Acting Director
Air and Radiation Division

CAA-5- '99 -047

REC

In the Matter of CDT Corporation

Docket No: : **CAA-5-99-047**

99 SEP 30 10:29

CERTIFICATE OF FILING AND MAILING

PRC

I, Betty Williams, do hereby certify that I hand delivered the original of the foregoing Administrative Complaint to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22), and copies of the Penalty Policy (described in the complaint) by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Danny Geiss, President
CDT Landfill Corporation
2851 Mound Road
Joliet, Illinois 60436

I also certify that copies of the Administrative Complaint were sent by First Class Mail to:

David Kolaz, Manager
Compliance and Systems Management Section
Bureau of air
Illinois Environmental Protection agency
1021 North Grand Avenue East
Springfield, Illinois 62702

Harish Narayan Acting Regional Manager
Region I
Illinois Environmental Protection Agency
1701 First Avenue
Suite 1202
Maywood, Illinois 60153

on the 30th Day of September 1999.

Betty Williams
Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: P 140 895 454 **CAA-5- '99 - 047**